

Vidya Amin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 3893 of 2021

Prakash @ Sanny Haribhau Khandare .. Applicant
Vs.
The State of Maharashtra .. Respondent

Mr. Ganesh Patil for the applicant.

Smt. Rutuja Ambekar, APP for the State.

Mr. Harshal Kulkarni, API, Badlapur Police Station present.

CORAM : BHARATI DANGRE, J.

DATE : SEPTEMBER 20, 2022.

P.C.:

1. The applicant came to be arrested on 3rd January, 2020 on the accusations levelled against him for the offences punishable under sections 376(2)(ii) and 506 of Indian Penal Code and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012.

On completion of the investigation, the charge-sheet is filed and the applicant has filed the present application seeking his release on bail.

2. The charge-sheet would reveal that the applicant is aged 28 years and the complainant is a victim girl aged 16 years when she reported to the police station on 2 January, 2020 stating that she was on friendly terms with one boy. She stated that her father was addicted to liquor and as there were constant quarrels between her parents, her mother

started residing at Saptashrungi temple, Nashik for last one month and the children were left destitute. The complainant along with her brother started residing at her grandmother's house and one of her sister had shortly left the house for staying with one of her aunt. Referring to the incident dated 26th December, 2019 she stated that her cousin uncle, i.e., present applicant was in the house when she returned home and it is an allegation that he informed her that he had seen her talking to Nagesh and he threatened her that she should satisfy him in bed and he would arrange for her marriage with Nagesh. It is also stated that he threatened her that he would cause harm to her and also to her family. Her allegations that he committed forceful intercourse with her and while he was under the act, her younger brother came into the room and noticed them in such a situation and ran outside the house. After disclosing the incident to the eldest of the family, she reported the matter to the police station on 2nd January, 2020.

3. The prosecutrix was medically examined and the report though do not contain any final opinion whether sexual violence is committed, it clearly record that the hymen was torn, however, there is no specific opinion expressed in the medical report about any sexual assault or violence.

4. The statement of brother of the victim girl is recorded, who has

corroborated her version to the effect that when he entered the room, he could see the applicant and his sister in an objectionable position but he states that when the enquiry was made with his sister about the incident, she stated that she was threatened by her uncle to have sex with him else her whole family would be in trouble.

5. During the course of investigation, the statement of victim girl under section 164 of Cr. P.C. was recorded where she states that she was studying in 10th Standard and on account of unpleasant situation in the family, she went to reside at her grandmother's house. She had admitted that she was in love with her cousin uncle, i.e., applicant and had repeatedly asked him about the time when the marriage will be solemnized but he was avoiding it and after the said act, she had lodged a false case against him. She has specifically stated in the statement given to the Magistrate that no act of rape ever was committed on her by the applicant and only to pressurize him to solemnize marriage with her, she lodged false complaint against him.

6. In the wake of the statement of victim girl, who has stated that she has falsely implicated the applicant and no incident of rape took place, though she is aged 16 years, from her statement under section 164 of Cr. P.C. it can be seen that she has attained the age of understanding and despite her age being 16 years, she has deposed

before the Magistrate that she had lodged a false complaint against the applicant so that he shall solemnize marriage with her.

7. Considering the aforesaid circumstances and particularly the statement of the victim recorded under section 164 of Cr. P.C., the applicant deserves to be released on bail. Hence, the following order:

ORDER

- i) Bail Application is allowed.
- ii) The applicant-Prakash @ Sanny Haribhau Khandare is released on bail in connection with Crime No. I-01/2020 registered with Badlapur Police Station on his furnishing PR. Bond to the extent of Rs.25,000/- (Rupees Twenty five Thousand Only) with one or two solvent sureties in the like amount.
- iii) The applicant shall mark his attendance before the concerned police station on first Saturday of trimester between 3.00 p.m. to 5.00 p.m.
- iv) The applicant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with the evidence.

v) On being released on bail, the applicant shall give his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(SMT. BHARATI DANGRE, J.)